

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

JASON BISHOP,
Plaintiff,

vs

SHERIFF HAMILTON
COUNTY, et al.,
Defendants.

Case No. 1:13-cv-258

Weber, J.
Bowman, M.J.

**ORDER AND REPORT AND
RECOMMENDATION**

Plaintiff, an inmate at the Correctional Reception Center, brings this civil rights action against defendants Hamilton County Sheriff and two unknown fugitive warrant detectives. On May 5, 2013, the undersigned issued a Report and Recommendation recommending that plaintiff's complaint be dismissed for failure to state a claim upon which relief may be granted. (Doc. 4). On May 22, 2013, plaintiff submitted a motion to amend or correct his complaint, as well as objections to the Report and Recommendation. (Docs. 8, 9). Plaintiff's motion to amend or correct his complaint (Doc. 8) is **GRANTED**.

This matter is now before the Court for a sua sponte review of the amended complaint to determine whether the complaint, or any portion of it, should be dismissed because it is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b).

Liberal construed, plaintiff's amended complaint states a First Amendment claim against defendants under 42 U.S.C. § 1983. Plaintiff has alleged that his legal materials and medical records were destroyed pursuant to the defendant Sheriff's policy and that he has suffered actual injury as a result. (Doc. 8, p. 2). At this juncture plaintiff's First Amendment claim may

proceed.

However, plaintiff's remaining claims must be dismissed. For the reasons stated in the May 5, 2013 Report and Recommendation, plaintiff has failed to state a due process or Fourth Amendment claim based on the seizure of his property. Accordingly, it is **RECOMMENDED** that these claims be dismissed. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b).

IT IS THEREFORE RECOMMENDED THAT:

1. Plaintiff's due process and Fourth Amendment claims be **DISMISSED** with prejudice on the ground that these claims fail to state a claim upon which relief may be granted.

2. The Court certify pursuant to 28 U.S.C. § 1915(a) that for the foregoing reasons an appeal of any Order adopting this Report and Recommendation would not be taken in good faith and therefore deny plaintiff leave to appeal *in forma pauperis*. Plaintiff remains free to apply to proceed *in forma pauperis* in the Court of Appeals. *See Callihan v. Schneider*, 178 F.3d 800, 803 (6th Cir. 1999), overruling in part *Floyd v. United States Postal Serv.*, 105 F.3d 274, 277 (6th Cir. 1997).

IT IS THEREFORE ORDERED THAT:

1. Plaintiff's motion to amend (Doc. 8) is **GRANTED**.
2. The United States Marshal shall serve a copy of the amended complaint, summons, the separate Order granting prisoner *in forma pauperis* status, the May 3, 2012 Report and Recommendation, and this Order and Report and Recommendation upon defendants, as directed by plaintiff. All costs of service shall be advanced by the United States.
3. Plaintiff shall serve upon defendants or, if appearance has been entered by counsel, upon defendants' attorney(s), a copy of every further pleading or other document submitted for

consideration by the Court. Plaintiff shall include with the original paper to be filed with the Clerk of Court a certificate stating the date a true and correct copy of any document was mailed to defendants or their counsel. Any paper received by a district judge or magistrate judge which has not been filed with the clerk or which fails to include a certificate of service will be disregarded by the Court.

4. Plaintiff shall inform the Court promptly of any changes in his address which may occur during the pendency of this lawsuit.

s/ Stephanie K. Bowman
Stephanie K. Bowman
United States Magistrate Judge

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NOTICE

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation (“R&R”) within **FOURTEEN (14) DAYS** after being served with a copy thereof. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent’s objections within **FOURTEEN DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).